EPBC Act Review Secretariat
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Dear Review Secretariat

Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999)

Thank you for the opportunity to comment on the independent review of the EPBC Act 1999. We have addressed the terms of reference and provided a list of our key recommendations.

We hope that any revision of this Act will lead to immediate and meaningful changes that are so urgently needed to address the national crisis in the condition of species, ecosystems, and heritage places.

Sincerely

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TASMANIAN LAND CONSERVANCY

The Tasmanian Land Conservancy (TLC) is a not-for-profit, apolitical, registered environmental organisation that protects native species and their habitat on private land (www.tasland.org, ABN 88 743 606 934). Since establishing in 2001, the TLC is now one of the largest private landholders in Tasmania with conservation reserves extending over 30,000 ha. TLC reserves are protected by a conservation covenant on title, many form part of the National Reserve System (NRS), some have World Heritage Area (WHA) status, and all have accredited management plans informed by long-term ecological monitoring (www.tasland.org.au). TLC also delivers on contract a Commonwealth Revolving Fund program and a Tasmanian Government stewardship and monitoring program for private covenanted properties. A priority focus of our work is directed to EPBC Act 1999 listed matters of national concern namely threatened species and community recovery programs, national threat abatement activities, listed migratory species, places with Ramsar and WHA status and proposals that potentially cause significant environmental harm to EPBC listed values in Tasmania.

Current Position

Australia's natural environment is this nation's greatest asset. As Australia's premier environmental protection law, the objectives and instruments of the current EPBC Act 1999 contain many positive features designed to protect and manage national environmental assets, and other protected matters, including nationally and internationally important flora, fauna, migratory species, ecological communities and heritage places. Historically, the EPBC Act has facilitated some exceptional conservation outcomes. It has underpinned the creation of the National Reserve System (NRS) and provided an evidence-based mechanism for listing threatened species, habitats and ecological communities. It has also facilitated public participation in decision-making.

Today however, we are witnessing a crisis of epic proportion in both environmental and species decline in Australia. The Act does not currently provide adequate protection for species and critical habitat across all land tenure as demonstrated by the decline in condition of species, ecosystems and heritage places. Many of the findings of the Independent Hawke Review 2009, including its nine point reform plan are yet to be adopted, the solutions proposed at the Threatened Species Summit 2015 have not been progressed, and support programs for the private sector such as the National Reserve System have been dismantled. We recommend that the current review seeks primarily to strengthen and expand the *EPBC Act 1999*. The Act should become the overarching environmental legislation enacted across all tenures in Australia. The review is a once in a decade opportunity - and it will be a decade of consequence. Bilateral and bipartisan support for the EPBC Act will provide for better integration and longevity – both of which are critical for nature conservation at this time.

Specifically, in response to the Discussion Paper questions the TLC recommends the following:

1. Matters of National Environmental Significance should be broadened to encompass high value, but currently unprotected, ecosystems and expanded to include additional triggers.
2. Develop the EPBC Act as the overarching national policy to address major threats to biodiversity: Implement key recommendations in the National State of the Environment Report (2016).
3. The EPBC Act becomes the single overarching legislation for environmental protection and biodiversity conservation to simplify compliance mechanisms between National, State and local government legislations and jurisdictions.

4. Develop a *National Ecosystem Assessment*, to identify high ecological values, threatened ecological communities and threats at a landscape-scale.
5. To ensure effective conservation management, develop a multi-faceted landscape-scale approach, which considers species' ecological requirements and manages both the species and habitat accordingly.
6. Establish national ecological monitoring (using a *National Environmental Accounts Framework*) to better inform species status, ecosystem stability and the effectiveness of land management practices.
7. Establish a *National Critical Habitat Register* which applies **across all tenures** (currently only applies to Commonwealth Land). Ensure that critical habitat is registered within 12 months of species listing and that the critical habitat of currently listed species is automatically uploaded from existing recovery plans.
8. Ensure accountability of *Extinction Events* through mandatory public enquiry.
9. Mechanisms should be developed and supported to ensure Matters of NES are not only preserved but improved.
10. Reinstate the National Reserve System (NRS) program to achieve a Comprehensive, Adequate and Representative (CAR) reserve system and increase ongoing stewardship support for existing protected areas.
11. Support the expansion and ongoing management of Indigenous Protected Areas (IPAs) and mechanisms for shared learning opportunities between traditional knowledge and modern science.
12. No new scope provided for streamlined assessments should be provided through the removal of case-by-case assessments or the creation of automatic approvals. Investigate the potential to create thorough *Self-assessment Guidelines* and forms for low-risk actions that promote species or ecosystem recovery.
13. Ensure community involvement in decision-making is maintained to retain transparency of the Act and confidence in the process.
14. Improve the Act and its accountability, by enhancing the decision-making structures, reducing timelines and increasing transparency.
15. Ensure adequate resourcing through increased funding to address and protect Matters of NES over the long-term, including through the development and provision of new databases and tools to implement the Act. Recognise cost and complexity of ecosystem repair and mitigation when addressing Matters of NES.

The above recommendations have been provided with more detail below under the appropriate Discussion Paper questions, which have been grouped as relevant.

THE TLC'S RESPONSE TO QUESTIONS IN THE DISCUSSION PAPER

Question 1: Some have argued that past changes to the EPBC Act to add new matters of national environmental significance did not go far enough. Others have argued it has extended the regulatory reach of the Commonwealth too far. What do you think?

Question 4: Should the matters of national environmental significance within the EPBC Act be changed? How?

Recommendation 1: Matters of National Environmental Significance should be broadened to encompass high value, but currently unprotected, ecosystems and expanded to include additional triggers.

The EPBC Act 1999 has provided many positive aspects that provide the potential to protect and manage Matters of National Environmental Significant (Matters of NES), including nationally and internationally important flora, fauna, migratory species, ecological communities and heritage places. However, despite this, many ecosystems of national importance have remained unlisted and unprotected, either through lack of protection by State and Territory legislation or lack of identification. For example, *nationally important wetlands* receive very little formal protection, despite having very similar ecological values to the internationally listed Ramsar wetlands. Similarly, *High Priority Vegetation* and *underrepresented ecological communities* are very rarely recognised in State or Territory legislation. In Tasmania, 39 of our Threatened Native Vegetation Communities are now listed under the Nature Conservation Act 2002. However, the NCA does not provide any strong mechanisms for protecting threatened vegetation (predominantly deferred to the Forest Practices Act), leaving those listed communities and many other under-represented vegetation communities comparatively unprotected (See Question 22).

We live in a rapidly changing world. Our environment continues to experience increased pressure from land-use change and land-use intensification. Climate change is clearly driving landscape-scale ecosystem decline, both directly and indirectly, resulting in rapid regime change or ecosystem collapse across a wide variety of ecosystems in Australia (Harris et al. 2018). Proactive management of both species and ecological communities at a landscape-scale that identifies natural climate refugia and provides species-movement pathways will become increasingly important. To address the decline in ecosystem health from these intensifying ecosystem drivers the EPBC Act needs to include additional triggers, to incorporate new and emerging science.

The TLC is highly supportive of the Environmental Defenders Office (EDO)'s suggestion for the EPBC Act's Matters of NES to include six new and expanded triggers:

1. *Ecosystems of National Importance (including High Conservation Value Vegetation, Key Biodiversity Areas and wetlands of national importance);*
    a. *High concentration of Key Biodiversity Areas and hotspots*
    b. *High Conservation Value Vegetation*
    c. *Nationally important wetlands*
    d. *Travelling Stock Reserves;*
    e. *Significant wildlife corridors;*
    f. *Wild rivers;*
    g. *Outstanding representations of Aust landscape/seascape (future candidates for NRS listing); and*

h. Climate refugia.

2. the National Reserve System (terrestrial and marine protected areas);
3. vulnerable ecological communities (alongside other threatened species and ecological communities); extend past critically endangered and endangered
4. significant land-clearing activities;
5. significant greenhouse gas emissions; and
6. significant water resources (expanded beyond coal and gas impacts).

Question 6: What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?

Recommendation 2: Develop the EPBC Act as the overarching national policy to address major threats to biodiversity: Implement key recommendations in the National State of the Environment Report (2016).

Ongoing habitat loss remains the single most significant threat to EPBC Act 1999 and Matters of NES, such as State-listed species and ecological communities. The National State of the Environment Report (2016) identified that none of these major pressures have decreased between the two reporting periods and that Australia needs new approaches if it is to address this downward trajectory. A key finding in that report was that we lack "*an overarching national policy that establishes a clear vision for the protection and sustainable management of Australia's environment*" and that national leadership is required to address threats to biodiversity. Addressing this gap and developing the EPBC Act as the overarching national policy should be a priority for the EPBC Review. The EPBC Act will require considerable work to ensure that it can provide the overarching national legislation recommended. To address this finding the Review needs to focus on amending the EPBC Act to achieve the following (as identified by the SoE 2016):

- effective collaboration across sectors and between managers;
- timely and effective flow of policy to action;
- data to be collected in the *National Environmental Accounts framework* and long-term monitoring to be established;
- mechanisms for adequate resourcing of environmental management and restoration – i.e. do not just maintain, but improve; and
- capacity to identify and measure cumulative impacts.

Question 14: Should the matters of national significance be refined to remove duplication of responsibilities between different levels of government? Should states be delegated to deliver EPBC Act outcomes subject to national standards?

Question 17: Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?

Recommendation 3: The EPBC Act becomes the single overarching legislation for environmental protection and biodiversity conservation to simplify compliance mechanisms between National, State and local government legislations and jurisdictions.

One of the most pressing environmental challenges in Tasmania is overcoming the confusion and disparity between State and Commonwealth roles, obligations and resourcing commitments to protect environmental assets, including Matters of NES. The Commonwealth *EPBC Act 1999* needs to provide the overarching environmental legislation to address this disparity, and subsequently provide the clear leadership to ensure States and Territories meet their commitments. National environmental leadership is vital to ensure a clear transparent process when assessing major projects, which is not unduly influenced by local perspectives. Legislation can also be streamlined during this process by adopting previously rigorous State, Territory or IUCN listing assessments that describe Matters of NES.

Similarly, there are existing deficiencies in the *EPBC Act 1999* that allow for the degradation of Matters of NES across Australia, through the application of exemptions under other Commonwealth or State legislation. For example, Tasmanian threatened species habitat and threatened ecological communities are consistently degraded or cleared through the application of exemptions to the *EPBC Act 1999* under the *Regional Forest Agreements Act 2002*. The TLC recommends removing broad scale exemptions to the *EPBC Act* that have a significant negative impact on Matters of NES and reinstating the Act as the primary overarching environmental legislation.

The TLC recommends strengthening the compliance mechanisms between Commonwealth and State and Territory governments to improve collaboration in environmental conservation. For example:

- The Minister must not be able to delegate approval powers to a State or Territory government for actions which will have, or are likely to have, a significant impact on Matters of NES, such as threatened species and ecological communities. All actions likely to impact on critically endangered species or ecological communities must be assessed by the Commonwealth Minister.
- Other Commonwealth and State legislation (i.e. the *Regional Forest Agreements Act 2002*) should not be exempt to the requirements of the *EPBC Act 1999*.
- The Commonwealth should promote the implementation of best practice laws for the protection of Matters of NES by States and Territories, including through State planning and building laws.
- The Commonwealth should have the legal mechanism to enter into conservation agreements, such as conservation covenants, under the *EPBC Act* with State and Territory Governments to secure protection for Matters of NES, particularly critically endangered

species and ecological communities. For example, in Tasmania most conservation covenants require both State and Commonwealth approval, which has ultimately increased public scrutiny and resulted in better conservation outcomes.

- The ambiguity in roles and responsibilities in the referral process for development projects should be removed, as potentially significant impacts may result from a failure to refer.
- Projects designated of State Significance should not be fast tracked, as it may reduce the capacity to ensure thorough and transparent assessment of Matters of NES in the development process.
- Commonwealth, State and Territory threatened species and ecological community's assessment criteria must be synchronised to allow for reciprocal recognition of assessments.
- State and Territory schedules of endemic threatened flora and fauna must be automatically uploaded to the *EPBC Act*.
- Locally, reconcile the *EPBC Act 1999's* Threatened Ecological Communities with the Tasmanian Threatened Native Vegetation Communities (as already done in many States), and subsequently include on the *Priority Vegetation* state-wide mapping layer, to improve the level of protection. Further, it is important that the integrated Commonwealth and State Threatened Ecological Communities are then actively integrated into local planning laws to reduce the loss of high value ecosystems.
- Fauna species listed on the IUCN Red List in the category of Critically Endangered must be automatically upgraded to that status under the *EPBC Act*.
- The Minister must act on the advice from the Threatened Species Scientific Committee to list a species or community as Critically Endangered.
- The Commonwealth must be required to "use its best endeavours" to get a State or Territory government to implement recovery plans and threat abatement plans within its territory.
- The Minister should have clear emergency listing powers in relation to species and communities considered to be critically endangered.

Question 7: What additional future trends or supporting evidence should be drawn on to inform the review?

Recommendation 4: Develop a *National Ecosystem Assessment* to identify high ecological values, threatened ecological communities and threats at a landscape-scale.

Despite 54.5% of Tasmanian native vegetation being both publicly and privately reserved (SoE 2016), a large proportion of Tasmanian threatened native vegetation or under-represented communities remain unprotected. In 2015 the Tasmanian *Nature Conservation Act 2002* (NCA) was amended to list 39 Threatened native vegetation communities, providing the first step to protection. However, the NCA is limited with no substantial mechanisms to protect communities against clearance (deferring to the *Forest Practices Act*), additionally the NCA list itself is very limited. The NCA fails to recognise many under-represented native vegetation communities or those described on the state-wide Priority Vegetation layer in Tasmania. Additionally, in many cases the *Nature Conservation Act 2002* or *Threatened Species Protection Act 1995* has not been strong enough to protect those listed communities against ongoing degradation from development. Consequently, reciprocal listing of these communities under the *EPBC Act 1999* should be a priority, as described above.

The TLC developed a World Class Reserves System (WCRS 2015) for Tasmania to strategically guide land acquisition and stewardship programs, using scientifically sound principals that accounted for vegetation types, habitat availability, aquatic values and landscape context. The use of the WCRS spatial prioritization tool has streamlined our conservation efforts and ensured that we are able to maximise our return on investment with private partnerships based on current data, which has assessed values and threats, regardless of listing status. Consequently, the TLC has an important role in landscape conservation, protecting significant areas of unprotected threatened native vegetation and underrepresented communities as identified by our WCRS tool. The WCRS emphasises the importance of using current ecosystem data to make sound environmental decisions and inform effective program implementation. The WCRS was developed by the TLC's independent Science Council comprising a collective of peers from a range of biological and environmental disciplines.

To adequately strengthen the *EPBC Act 1999* the TLC strongly supports the EDO's recommendation for a **National Ecosystem Assessment** to underpin planning and decision-making, including:

- *involve a rapid initial assessment to identify areas under imminent threat, and other immediate and essential actions to protect the national environment, such as the identification and protection of High Conservation Value Vegetation (interim report);*
- *support the Minister's legal duty to identify, assess and list (via the Scientific Committee) all nationally Threatened Ecological Communities within five years (major report), with ongoing duties to keep lists up-to-date;*
- *identify, recognise and map the new Commonwealth-protected matters of Ecosystems of National Importance and a comprehensive, adequate and representative National Reserve System;*
- *provide a properly resourced and comprehensive update to Australia biodiversity mapping and integrated data-sharing systems;* for example – reinvigorating the Collaborative Australian Protected Area Database (CAPAD) and subsequently ensuring its use is important to clearly understand the distribution of Australia's biodiversity protected within the NRS;
- *better inform a national network of bioregional plans;*
- *identify baselines, reference points or indicators for a system of National Environmental Accounts, with clear timeframes, stages and budgetary allocations from the Commonwealth, state and territory governments; and*
- *promote the concept of ecosystem services and identify the benefits (or services) that key natural assets provide to human society, consistent with the Aichi targets under the Convention on Biological Diversity.*

Question 16: Should the Commonwealth's regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?

Recommendation 5: To ensure effective conservation management, develop a multi-faceted landscape-scale approach, which considers species' ecological requirements and manages both the species and habitat accordingly.

The TLC strongly supports a multi-faceted approach that is dependent on the species' ecological requirements, managing the species and *habitat*. For example, many fauna species would benefit from a landscape-scale ecosystem approach. Jointly managing the species and its habitat and incorporating bioregional priorities. Species do not exist in isolation and require intact habitat that

supports a diverse ecosystem with diverse species interactions. Additionally, landscape-scale conservation often provides the most ecologically- and cost-effective approach, protecting multiple other species within the habitat. However, many threatened plants, especially narrow range endemics with highly idiosyncratic ecological requirements (e.g. many flora species), need a fine scale approach. These species have very particular habitat requirements and do generally not benefit from a landscape scale approach. Consequently, it is important to continue to assess all referrals on a case by case basis and provide a multi-faceted tenure blind response.

Question 22: What innovative approaches could the review consider that could efficiently and effectively deliver the intended outcomes of the EPBC Act? What safeguards would be needed?

Recommendation 6: Establish national ecological monitoring (using a *National Environmental Accounts Framework*) to better inform species status, ecosystem stability and the effectiveness of land management practices.

Long-term ecological monitoring is fundamental to evidence-based environmental decision-making. Now more than ever we need high quality, statistically rigorous monitoring (driven by the right questions) to show change in Matters of NES resulting from our conservation effort. The lack of data and information from long-term ecological monitoring is universally acknowledged as a major impediment to biodiversity conservation and understanding of our successes or failures.

Except for a small number of iconic threatened species, Australia lacks consistent monitoring capable of determining species population or ecological community condition trends to determine the effectiveness of our management (SoE 2016). In addition, apart from citizen science monitoring (e.g. the Atlas of Australian Birds) few species monitoring programs exist with any longevity. Similarly, the Tasmanian government has also recognised that quality data was not available to make adequately informed planning decisions and recommends to improve the coordination of data collection and analysis (Tasmanian SoE 2009). The TLC has invested in ecological monitoring across its entire reserve estate, demonstrating that this is possible. In six years we were able to establish the baseline and now have trend data for many threatened species and vegetation communities. With new technology and temporal monitoring stations we will be able to efficiently expand our knowledge base. Comparatively simple monitoring can provide invaluable indicators for slight changes and trends. For example, the TLC's strategic monitoring of the nationally listed flora and fauna at Vale of Belvoir is helping to develop effective disturbance (grazing and burning) regimes for the threatened *Leucochrysum albicans, Stackhousia pulvinaris,* and *Oreixenica ptunarra*.

Consequently, the TLC strongly supports the proposal for a **National Environmental Accounts framework**. We support that the *EPBC Act 1999* should require the establishment of a National Environmental Accounts framework that is underpinned by peer-reviewed scientific methods, which assess extent, condition and trends in key environmental assets. While we acknowledge this will require an initial outlay, once established it will provide an invaluable tool that can be used to robustly implement the *EPBC Act*, and likely lessening reporting over the long-term by extending its use to multiple planning forums. For example, it could be effectively used to develop the State of the Environment reports (States and Commonwealth), strategic environmental assessments and other state planning legislation. It would overcome many current limitations in the Act that allow for environmental degradation, arising primarily through a lack of current environmental data on:

- *the extent, condition (e.g. from very poor to excellent health) and threatened status of key environmental assets over time;*
- *stocks and flows of environmental assets and natural resources (i.e. whether they are being depleted, replenished or sustainably used) – enabling region by region comparisons across Australia); and*
- *the extent and impact of key threatening processes such as invasive species, habitat loss and degradation, disease and climate change.*

The TLC supports and strongly encourages the inclusion of the following monitoring components in the **National Environmental Accounts framework**, as described by the EDO:

- *landscape health (forests, grasslands, wetlands, estuaries etc);*
- *threatened and other biodiversity (terrestrial and aquatic);*
- *native vegetation cover and condition;*
- *urban and regional carbon footprints;*
- *estimated carbon storage and loss;*
- *salinity and soil health; and*
- *water quality.*

Recommendation 7: Establish a *National Critical Habitat Register* which applies *across all tenures* (currently only applies to Commonwealth Land). Ensure that critical habitat is registered within 12 months of species listing and that the critical habitat of currently listed species is automatically uploaded from existing recovery plans.

Only five species are publicly listed on the DAWE Critical Habitat register, all prior to 2006 (http://www.environment.gov.au/cgi-bin/sprat/public/publicregisterofcriticalhabitat.pl), highlighting the ineffectiveness of this otherwise potentially strong protective legislative mechanism. No critical habitat has ever been registered under Tasmania's *Threatened Species Protection Act 1995* since the Act's inception despite it containing clear provision to do so. This deficiency could be addressed by establishing a new national **critical habitat register** applicable across all Commonwealth, State and Territory land tenures to ensure that critical habitat is registered within 12 months of a species being listed. Critical habitat could be uplifted from all existing recovery plans for critically endangered species and automatically entered on the Critical Habitat Register.

It is vital that the *EPBC Act 1999* is amended to protect *Critical Habitat* (enforceable) across all land tenures. Species and ecological communities occur across all political boundaries, with many species occurring exclusively on private or state and territory land. However, this distribution on state or private land means their critical habitat is currently unprotected. This loophole needs to be addressed under the current review.

Recommendation 8: Ensure accountability of *Extinction Events* through mandatory public enquiry.

Australia has the worst mammal extinction rate in the world, with 100 species listed as extinct under Commonwealth, State and Territory legislation or by the IUCN. A primary objective of the *EPBC Act* should be that there are no future extinctions through the implementation of appropriate and timely environmental management. However, since the implementation of *EPBC Act 1999*, an

additional three species have become extinct in response to known ecological drivers. Their extinction was contributed to by the influence of ineffective policy and under resourced management (Woinarski, Garnett, Legge, Lindenmayer 2016). The TLC supports Woinarksi et al. (2016)'s finding that there be a mandatory requirement for a formal public enquiry into any species extinction. The enquires should be conducted by a panel of qualified experts, that:

- identify causes of extinction;
- recommend future conservation management, policy or law reform; and,
- recommend conservation lessons to prevent future species extinctions.

Question 11: How can environmental protection and environmental restoration be best achieved together? *- Should the EPBC Act have a greater focus on restoration? - Should the Act include incentives for proactive environmental protection? - How will we know if we're successful? - How should Indigenous land management practices be incorporated?*

Recommendation 9: Mechanisms should be developed and supported to ensure Matters of NES are not only preserved but improved.

The TLC supports the *EPBC Act 1999* being strengthened to not only protecting Matters of NES but improving their condition through the provision of mechanisms to support environmental restoration. The mechanisms to be considered, include the provision of financial incentives to undertake environmental restoration of both private and public land. *The Scoping Paper: Expanding Finance Opportunities to Support Private Land Conservation in Australia* (Australian Land Conservation Alliance, ALCA 2018) provides recommended financial mechanisms to support private land conservation, which could be more broadly be developed to provide mechanisms/incentives for proactive environmental management and restoration under the *EPBC Act*. Key relevant recommendations include:

- *Rec 4: Create a major Australian environmental trust fund.* It could replicate the highly successful Nation Reserves System program, which then leveraged private funding. A good current example is the NSW *Biodiversity Conservation Trust,* which provides stewardship payments to landholders.
- *Rec 6: Strengthen tax incentives to support long-term private land protection.* International examples show the tax incentives can significantly increase permanent conservation covenanting, often leading to proactive environmental management.
- *Rec 7: Research & Invest in models to test a voluntary biodiversity credit market.* This mechanism has the ability to stimulate businesses to recognise and voluntarily offset biodiversity impacts through investment in environmental restoration, similar to a voluntary carbon market.
- *Rec 8: Support the private sector to develop the conservation finance market.*

Question 25: How could private sector and philanthropic investment in the environment be best supported by the EPBC Act? - Could public sector financing be used to increase these investments? - What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?

Recommendation 10: Reinstate the National Reserve System (NRS) program to achieve a Comprehensive, Adequate and Representative (CAR) reserve system and increase ongoing stewardship support for existing protected areas.

The provision of up to two-thirds of the purchase price by the Australian Government for strategic NRS land acquisitions was the catalyst for growth in the Australian Private Protected Areas (PPAs). Access to NRS funds not only facilitated better long-term protection of some of Australia's most endangered species and threatened ecosystems, but also escalated significant leverage from philanthropic sources that resulted in the large increase in extensive PPAs managed by the NGO sector (e.g. Australian Wildlife Conservancy, Bush Heritage Australia, Tasmanian Land Conservancy). The contribution of NGOs through land acquisition and the facilitation of conservation covenants on private land are critical contributions towards Australia's conservation challenge. This reflects the enormous willingness of private landholders to play a role in national conservation goals. Despite its success the NRS program was dismantled in late 2012. Since then, the overarching national approach to the establishment of PPAs has declined and in Tasmania the support for private covenants has virtually ceased. The NRS has enabled the establishment of multiple high conservation value TLC reserves, including the Vale of Belvoir, Egg Islands, Skullbone Plains, Long Point, and Flat Rock. The TLC leveraged NRS funding with philanthropic donations to increase conservation outcomes and linked their management to the TLC Foundation, to ensure the perpetual funding of management. The Vale of Belvoir, Egg Islands and Skullbone Plains are used as exemplar case studies of the positive private land conservation outcomes that could be achieved with NRS funding (https://www.environment.gov.au/land/nrs/case-studies/tas).

The continued growth of NGOs in the face of declining government support has resulted in increased capacity to deliver private land conservation by leveraging philanthropic and corporate involvement. Over the past five years, the major land conservancies have permanently protected over 500,000 ha of threatened species habitats. The direct services provided by private conservation landholders include contributing to pest animal control, habitat restoration, weed removal and provision of ecosystem services. These actions add cumulative impact to conservation management and exemplifies what can be achieved by working together. With the use of expert GIS tools, priority corridors and habitat linkages can be expanded on private land and add to the CAR reserve network across Australia.

Reinstating the NRS grants program and commensurate support for mechanisms such as perpetual conservation covenants are essential if we are to adequately maintain ecosystem condition and improve Matters of NES (such as threatened species recovery) and assist private landholders who have significantly invested in this process. The benefit of the *EPBC Act* supporting private land conservation and environmental NGOs (partly funded by philanthropy) through supportive mechanisms that support private land stewardship and reinstating the NRS grants is that:

- Increasing investment in partnerships with the private sector through mechanisms such as the NRS grants and perpetual covenants on private land could also increase the return on dollar investment.
- Funding leveraged by philanthropic partnerships contributes and actively engages with willing private landholder participants.

- Endowment funding models in combination with government support provide the ability to maintain a long-term funding model, operating consistently across changes in governments and in-line with the long-term planning required for successful land management.
- The comparative consistency in funding models facilitate long-term relationships with surrounding landholders, and communities that build trust and help create positive long-term environmental change.
- Other effective area-based conservation measures (OECMs), such as PPAs and other forms of supported private conservation land, also increase our ability to deliver effective landscape-scale conservation under a changing climate and intensifying land-use across multiple tenures, provide species' within the ability to move within the landscape. The national Land for Wildlife (LfW) program is an clear example of the reach of private land conservation (OECMs), improving the conservation over 2.3M ha (14,043 properties) Australia-wide, and in Tasmania over 59,000ha (966 properties) (Prado et al. 2018). The TLC now deliverers the LfW program for DPIPWE, already registering 75 properties (2,338 ha) to date this financial year.

Question 12: Are heritage management plans and associated incentives sensible mechanisms to improve? How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?

Question 19: How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management? - *How can we best engage with Indigenous Australians to best understand their needs and potential contributions?* *- What mechanisms should be added to the Act to support the role of Indigenous Australians?*

Recommendation 11: Support the expansion and ongoing management of Indigenous Protected Areas (IPAs) and mechanisms for shared learning opportunities between traditional knowledge and modern science.

The TLC recognises and supports Aboriginal and Torres Strait Islander peoples as professional managers of their land and sea countries in the contemporary context. We acknowledge the proven enabling benefits of IPAs and dedicated Ranger programs which deserve and require long term funding commitments. We strongly support any opportunities to foster and share knowledge between Aboriginal people and other land managers in whatever capacity or context demonstrated as beneficial to addressing any matter of environmental concern.

The TLC has partnered with the Tasmanian Aboriginal Community to protect three culturally and ecologically important properties, trawtha makuminya (https://tasland.org.au/programs/trawtha-makuminya/), Panatana and Kings Run. The NRS was critical in supporting the purchase of trawtha makuminya, and the project has provided a model for reconciliation and the partnership in Tasmania. The TLC has a strong partnership with the Indigenous Land and Sea Corporation and we strongly support further collaboration that realises the protection of cultural and natural values.

Question 13: Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?

Question 15: Should low-risk projects receive automatic approval or be exempt in some way? ***- How could data help support this approach? - Should a national environmental database be developed? - Should all data from environmental impact assessments be made publicly available?***

Question 18: Are there adequate incentives to give the community confidence in self-regulation?

Recommendation 12: No new scope provided for streamlined assessments should be provided through the removal of case-by-case assessments or the creation of automatic approvals. Investigate the potential to create thorough *Self-assessment Guidelines* and forms for low-risk actions that promote species or ecosystem recovery.

The TLC disagrees with the generic removal of case-by-case assessments, giving projects automatic approval or exemption. Currently, our environmental laws are compromised by a lack of adequate data to make informed decisions about the range and status of biodiversity across Australia (Tas SoE 2009, Au SoE 2016). Therefore, it is unlikely that an adequately informed automated decision about proposal exemption could be made. However, even with adequate data automated assessment processes should be treated with caution, as natural systems are inherently complex and a referred project (by definition) is negatively affecting a Matter of NES.

The TLC is supportive of investigating the potential to clearly develop *Self-Assessment Guidelines*, which articulate clearly define impact thresholds (similarly to the IUCN, i.e. <10% of population etc) for low risk actions that promote species or ecosystem recovery. Previously seemingly unnecessary referrals have been required when implementing a recovery action for a threatened species or ecological community. Examples include:

- submitting a referral for planned burn or hydrological restoration to replicate disturbance to promote germination of threatened flora species as described in their National Recovery Plans, or
- submitting a referral to undertake comparatively conservative scientific research.

If the *Self-Assessment Guidelines* determine that it is a low risk action, then self-assessment forms could be signed off by an appropriate regulatory body. If the action does not pass the required thresholds, it would then guide the applicant to complete a full referral for a controlled action.

The TLC is supportive of all data from the environmental impact assessments being make publicly available.

Question 20: How should community involvement in decision making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision-making bodies be increased?

Recommendation 13: Ensure community involvement in decision-making is maintained to retain transparency of the Act and confidence in the process.

The public involvement in the *EPBC Act* has been one of its greatest strengths, allowing for comment on controlled actions, and providing the ability to nominate species or ecosystems for listing. The TLC has participated in community consultation processes for threatened species and

ecosystem nominations, and relevant development applications that effect or adjoin our estate. The TLC highly values the ability to provide expert comment on local Matters of NES and remaining involved in processes that have a direct effect on the condition of Tasmanian ecosystems. The TLC believes public participation is important to maintain a transparent and effective process. We are supportive of the EDO's recommendations:

- *strong public participation provisions;*
- *merits review for key decisions;*
- *easily accessible, timely public information on actions and decisions;*
- *open standing to review legal errors and enforce breaches; and*
- *protective costs orders.*

Question 21: What is the priority for reform to governance arrangements? The decision-making structures or the transparency of decisions? Should the decision makers under the EPBC Act be supported by different governance arrangements?

Question 23: Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?

As previously discussed, the *EPBC A*ct has many positive aspects that provide the potential to protect and manage Matters of NES, including nationally and internationally important flora, fauna, migratory species, ecological communities and heritage places. However, over the past 20 years many gaps have been identified, which have allowed environmental degradation to continue. The governance and resource capacity need to be improved to ensure that the *EPBC Act* can be the overarching Environmental Protection and Biodiversity Conservation Act. In particular, the TLC recommends improving accountability of timely decisions by decision makers and provision of adequate resources to ensure the Act is implemented to its full potential.

Recommendation 14: Improve the Act and its accountability, by enhancing the decision-making structures, reducing decision times and increasing transparency.

Strengthen recovery actions:

- Within 6 months of a species being listed as endangered, a recovery plan must be adopted for the species or community (or revised, if one already exists), unless the Threatened Species Scientific Committee advises that a plan is not required.
- Recovery plans must include clear performance indicators, and the Department of Agriculture, Water and the Environment must report against these indicators in its annual report.
- Commonwealth funding for environmental and scientific research programmes should give priority to proposals that will further the survival of an endangered fauna species.

Avoid impact

- The *Significant Impact Guidelines* should provide that any adverse impact on a critically endangered species or ecological community, including any adverse impact on listed critical habitat, will be "significant".
- The Minister must seek, and act consistently with, the advice of the Threatened Species Scientific Committee in relation to any proposed actions which may adversely impact threatened fauna.

- The Minister must be able to vary or revoke an approval where a threatened species impacted by the approved activity is 'up-listed' in threat status.

Recommendation 15: Ensure adequate resourcing through increased funding to address and protect Matters of NES over the long-term, including through the development and provision of new databases and tools to implement the Act. Recognise cost and complexity of ecosystem repair and mitigation when addressing Matters of NES.

INVEST IN RECOVERY AND MANAGEMENT OF MATTERS OF NES

Commonwealth funding for threatened species and biodiversity conservation has been in decline over the past decade. A recent retrospective of funding for threatened recovery programs has found the Australian Government's funding has been *ad hoc*, short term and not commensurate with the magnitude of the problem (Garnett et al. 2018). Few threatened species recovery plans have ever received adequate funding to ensure their implementation either in part or full.

The National Threatened Species Strategy identifies 20 mammal and 20 bird species as the priority fauna for attention despite there being over 500 listed threatened fauna of which 240 are endangered or critically endangered. In the Year 2 Progress Report of that Strategy a budget of $256 million across 3.5 years equates to approx. $73 million per year in funding across 1206 projects. This equates to around $61,000 per project per year spread across the National Landcare Program, 20 Million Trees and Green Army, meaning significantly less funding goes specifically to priority threatened species projects due to its dilution across many players with varying objectives but only $5 million dedicated to a national Threatened Species Recovery Fund. In Tasmania, the breakdown in regional NRM delivery and the lack of a dedicated Threatened Species or Biodiversity Fund has fuelled the chronic failure to adequately protect threatened species and ecological communities, forcing the private and for-purpose sector to take the lead role. This has meant effective conservation relies on the extraordinary good will of committed private landholders to proactively manage their nationally or regionally important ecological values. For example, Tasmania has 866 private conservation covenants that protect 109,325 ha, however, these landholders have very minimal access to financial support and conservation advice.

There are compelling cases demonstrating the impact of trophic cascades when keystone species are lost from the ecosystem. The financial cost and complexity of recovering destabilising ecosystems is orders of magnitude greater than single species recovery and requires collaborative effort across entire landscapes. Recognising the cost and complexity of ecosystem repair and mitigation should be considered to address the species extinction crisis now while it is still possible.

INVEST IN DATABASES and NEW TOOLS

The TLC is very supportive of the EDO's recommendation to adequately fund and implement a *National Environmental Accounts Framework* and *National Ecosystem Assessment* to appropriately implement the National Biodiversity legislation. The TLC strongly recommends that similar databases, such as the Collaborative Australian Protected Area Database (CAPAD), are regularly updated to effectively inform conservation management, unless they are replaced by the formerly mentioned frameworks. These databases and tools will allow for informed planning decisions to be made, which will eventually expediate the referral process.

FUNDING REQUIREMENTS and MECHANISMS

The *EPBC Act,* and more generally the environmental sector, is critically under-funded by finance provided over increasingly short time periods, which preventing effective long-term environmental management. To effectively maintain and restore Matters of NES considerably more investment is required, delivered through novel methods that facilitate long-term management.

The Resilient Landscapes Package (2020), supported by the Australian Land Conservation Alliance (ALCA) and developed by The Nature Conservancy (TNC), was put forward to the 4th Ministerial Round Table. It proposed new funding models capable of responding to the post-bushfire environmental crisis by creating landscape resilience, through the delivery of a collaborative funding model between Government and the private sector. While it this package focussed on meeting bush-fire recovery objectives, it also addressed landscape resilience and threatened species management as is required for maintaining Matters of NES. The package suggested novel funding models that provide long-term certainty, models that could also be applied to funding the EPBC Act 1999 going forward. The TLC, as a member of ALCA, is extremely supportive of developing a well-funded model, which has long-term sustainable finances that can address long-term ecological goals. The Resilient Landscapes Package (RLP) suggests three funding streams, funding models that could also be applied to EPBC Act (RPL costs retained as indicative scale of finance required):

- Grants to funding ($500M – $1B) short-medium goals through (i) on-ground activities (i.e. restoration, reintroductions, incentive payments for protection of refugia, feral & weed control, fencing) and (ii) development of market drivers and policy settlings (i.e. diversification of income streams, cultural burning, biodiversity markets and offset schemes).
- Environmental Impact Bonds ($500M over 10y) – a pay-for-success, upfront capital from private investors and repaid by government. The tenure of bonds would create long-term certainty for environmental projects to occur and provides an immediate financial source up-front.
- Co-investment vehicle ($3B), focussing on biodiversity, soil quality and water security outcomes in productive regions to ensure financial returns on the market. Co-investment vehicles have been shown to be successful in other sectors (i.e. Clean Energy Finance Corporation and Grid Reliability Fund) and have the ability to substantially increase investment from the private sector by 5-10X.

Previously the Wentworth Group of Concerned Scientists (2015) have calculated that the funds required to restore our environment back to good health was in the order of $5 billion per year for 34 years, or between 0.5 and 1.0 per cent of GDP over 20 years. Examples of suggested innovative mechanisms to fund biodiversity conservation include:

- The Wentworth Group proposes innovative ways to achieve this funding through changes to, for example stamp duty, land tax and local government rates and a price on carbon.
- Establishment of an endowment fund for threatened species conservation through crowd funding or philanthropic donations as an alternative to government funding cycles and to provide stability and certainty over long time frames (Threatened Species Summit, Melbourne 2015).
- Increasing investment in partnerships with the private sector through mechanisms such as the NRS grants and perpetual covenants on private land could also increase the return on dollar investment and conservation outcomes.

- Development of a national framework for environmental economic accounts, to help farmers and the community understand the value of natural capital and the economic and social consequences of its decline could create a market value for biodiversity to contribute to its conservation and proper management.
- Other conservation finance instruments, such as environmental bonds should also be implemented.